

WHICH GUARDIANSHIP REMOVES WHICH RIGHTS?*

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***Information applies to residents of Ontario, Canada only.**

It is exciting to see that FINALLY people are starting to talk about important topics in the lives of caregivers to incapable adults such as "Adult Guardianship", RDSPs, ODSP, Housing etc. but often this information is merely "scratching the surface" of the topic, and MORE research will be required.

Adult Guardianship has become a very popular topic, and informational presentations regarding this topic can be misleading as often the words "Adult Guardianship" is used as a "blanket term" when providing information and facts (of any kind) regarding this Very Important topic.

Caregivers must be AWARE there are two (2) types of "Adult Guardianship":

- 1) Guardianship of Personal Care and
- 2) Guardianship of Property

...and (although not "official"... should you choose to pursue both Guardianships together - this is referred to as "Guardian of the Person" or "Full Guardianship".

The two types of "Adult Guardianship" MIRROR (almost exactly) the duties and powers of a "Power of Attorney for Personal Care", and the duties and powers of a "Power of Attorney for Property".

The main difference between Powers of Attorney and Adult Guardianships, is that (generally speaking)...

- A Power of Attorney is a legal document created by a person (when they are mentally capable) JUST IN CASE they need it in the future--and THEY pick who they want to step in to make decisions for them... either in Personal Care, or in Property.

- A Guardian is someone who steps up and asks to be picked for that role... either for Property, or Personal Care, or both. They ask for this role because their loved one has been proven to be "mentally incapable" to make decisions in one, or both of these categories. (Personal Care and/or Property)

As a caregiver who is researching what "Adult Guardianship" is, and which Adult Guardianship is right for you (if any)... you should absolutely **keep these two "Guardianships" (Personal Care and Property) SEPARATE in your mind.**

When you read something, or when you hear a presenter refer to just "Adult Guardianship" PLEASE ask them to clarify which Guardianship they are referring to-- because what they are saying MAY only pertain to one type. If it pertains to both types (ie: Guardian of the Person) they SHOULD specifically reference that. This will make the presentations/webinars you attend- SO MUCH EASIER to understand, and allow you to make a more educated decision on whether or not pursuing "Adult Guardianship" (of any kind) is right for you and your loved one.

For example: If a presenter makes the statement that "Guardianship removes the decision making rights from the person with a disability." This statement, when you hear it, or read it, can be very intimidating and scary-- which may or may not be the intention of the presenter. This particular statement is a "blanket statement" and therefore not a fair statement.

To learn more about Substitute Decision Maker in Ontario, please visit:

<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/ISBN-0-7794-3016-6.pdf>

This statement should be broken down so the audience can understand what this means.

(Statement) "Guardianship removes the decision making rights from the person with a disability."

ok... so let's ask the next question....

"WHICH Guardianship Removes WHICH Rights?"

As previously mentioned, there are two (2) types of Adult Guardianships:

1) **Guardianship of Personal Care** removes the "Rights" that are ONLY associated with Personal Care.

Personal Care includes ONLY the following six (6) areas: health care, nutrition, shelter, clothing, hygiene, and safety. For MOST, Guardianship of Personal Care is NOT necessary because in Ontario, we all have an AUTOMATIC Substitute Decision Maker in regards to our "Medical Decisions". It is typically discouraged for someone who is already an "Automatic Substitute Decision Maker" to pursue a Guardianship of "Personal Care" to only obtain the additional "right" to make decisions on "nutrition, shelter, clothing, hygiene, and safety". These additional rights are not considered "risky" and therefore are almost never challenged by organizations or authorities to produce the legal documentation for these rights.

2) **Guardianship of Property** removes the "Rights" that are associated with Property.

"Property" includes a wide variety of actions such as: banking, signing cheques, paying bills, buying or selling real estate, buying regular goods and services, applying for benefits, filing taxes, lending, selling, storing or disposing of personal belongings... etc.

If your adult loved one is unable to understand, manage, and make their own decisions regarding their own "property", AND they are NOT mentally capable to create a Power of Attorney for Property, then Adult Guardianship of Property MAY be required.

Unlike "Personal Care", there is NO "Automatic" Substitute Decision Maker for ANY areas of "Property" and "Supported Decision Making" is NOT legally recognized in Ontario.

In Ontario, legal authority must be designated to someone in order for that individual to "help" or advocate, or make decisions in regards to another adult's Property. Legal Authority means either a Power of Attorney for Property or Guardianship of Property- there are no other options, alternatives, or substitutions.

According to "Ministry of the Attorney General The Office of the Public Guardian and Trustee, Duties and Powers of a Guardian of Property", Queen's Printer for Ontario, 2007, Reprinted in 2020, Legal Responsibilities of a Guardian, Page 5.

- It is your responsibility to try to inform the incapable person of all their powers and duties, to the extent that the person is able to understand.
- As the Guardian of Property, you must encourage the incapable person to participate, to the best of their abilities, in your decisions about the property.
- You must consult from time to time, with supportive family members and friends who are in regular contact with the incapable person and with people providing personal care to the incapable person.
- You must foster personal contact between supportive family members, caregivers, and the incapable person.

If you obtain Guardianship of Property for your adult loved one- THEY WILL RETAIN THEIR RIGHTS to make decisions regarding their "Personal Care", and they will still have the right to be consulted about decisions to made regarding their "Property". The individual will only lose the right to the "final say" in regards to managing their property.

Guardianship of the Person- aka Full Guardianship, would remove all "Final" decision making rights in all aspects of the incapable person's life. It is this type of Guardianship, that is sometimes referred to as an "extreme measure" or a "heavy tool".

NOTE: All guardianship types should be considered only when POAs are not an option. ie: "last resort".

To request a link to view "Adult Guardianship Explained" (video) or other Adult Guardianship related Resources, please visit www.tbhlegal.ca/adultguardianship

Rachel Merucci is an Ontario licensed Paralegal and sole proprietor of TBH legal and TBH admin.

TBH legal was launched in 2023 providing FREE Adult Guardianship education to caregivers and care-workers of mentally incapable adults. TBH admin provides an affordable Guardianship of Property Application Service as required by the Office of the Public Guardian and Trustee (PGT). TBH admin is relied upon by Ontario Caregivers to obtain "Guardianship of Property" for their loved ones in the easiest and quickest way, at the most affordable price.

To learn more about TBH legal, TBH admin, and Rachel Merucci and/or connect with her on social media, check out www.tbhlegal.ca or <https://www.facebook.com/profile.php?id=100087336435462> or email rmerucci@tbhlegal.ca.
